

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

**IN RE NATIONAL PRESCRIPTION
OPIATE LITIGATION**

This document relates to:

PBM Bellwether Cases

MDL No. 2804

Case No. 17-md-2804

Judge Dan Aaron Polster

PLAINTIFFS' MOTION TO SERVE ADDITIONAL DISCOVERY

PBM Bellwether Plaintiffs request leave to serve additional written discovery requests pursuant to this Court's *Order* (Doc #: 5282) (Filed: 12/28/23) ("*PBM CMO-1*") which states: "The Parties may seek to propound additional requests for production and interrogatories after the Court rules on Plaintiffs' motion for leave to amend their complaints." (*PBM CMO-1*, p. 5). The motion for leave to amend was granted. See Order Granting Plaintiffs' Motion For Leave To Amend And Supplement Complaints (Doc #: 5319) (Filed: 02/20/24) making this motion ripe and timely.

The PEC served initial discovery on December 29, 2023, which included interrogatories and request for production of documents (attached as Exhibit 1). Defendant PBMs responded with 485 pages of objections on January 29, 2024. Since that time, numerous meet and confers have taken place yielding very little in substantive answers and/or responsive documents. Newly discovered documents from Purdue Pharma's prior productions reveals deeply rooted contractual relationships with the PBM Defendants and promotional activities related to OxyContin. Nonetheless, PBM Defendants continue to contest and refuse to comply with basic discovery requests. For example, though ESI purports to have addressed Plaintiff's complaints regarding

ESI's initial discovery responses by recently serving "Amended" responses, those Amendments incorporate the objections from ESI's original responses and provide almost no substantive information. When faced with similar intransigence in the past with other defendants¹, this Court permitted the PEC to serve additional discovery to prioritize, clarify and specify the production of certain documents. Anticipating the PBM Defendants will argue the PEC has exceeded its allotted number of interrogatories and requests for production of documents, ironically in the face of objecting to every propounded discovery request, the PEC seeks leave to serve the attached supplemental discovery and requests the Court order the PBMs to respond immediately.

Because these requests prioritize and clarify the previously served requests in response to PBM Defendants' objections (including vagueness), the PEC submits these requests should not be separately counted against the number of requests which the Plaintiffs are permitted to serve under the applicable CMOs. In making this request, the PEC does not concede that the previous requests were impermissibly vague, but rather, the PEC makes this motion in an effort to resolve a discovery stalemate and obtain the foundational documents necessary to inform additional requests. PEC reserves the right to seek to issue further discovery beyond these threshold issues regarding additional aspects of the PBMs' operations and Plaintiffs' allegations, including, but not limited to, Mail Order Pharmacy Operations.

WHEREFORE, the PBM Bellwether Plaintiffs request leave to serve the attached discovery (Exhibit 2) to supplement, clarify and/or prioritize the initial discovery requests and request a hearing, with the Court if necessary.

¹ This Court previously addressed a similar roadblock during the November 20, 2018, status conference and permitted the PEC to serve additional discovery to prioritize and clarify the discovery needs of the case. *See, e.g.*, Doc. #s: 1147, 1161, 1147 and 1169.

April 2, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on April 2, 2024, I electronically filed the foregoing with the Clerk of Court by using the CM/ECF system. Copies will be served upon counsel of record by, and may be obtained through, the Court CM/ECF system.

s/ Peter H. Weinberger

Peter H. Weinberger